

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 191

HOUSE BILL 2296

AN ACT

AMENDING SECTIONS 28-2097, 28-4301, 28-4335, 28-4403, 28-4408, 28-4498, 28-4499 AND 28-5109, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 23, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2394; RELATING TO THE MOTOR VEHICLE DIVISION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-2097, Arizona Revised Statutes, is amended to read:

28-2097. Modular motor homes; definition

A. Notwithstanding any other provision of this title:

1. If a refurbished coach or body component is remounted to a new cab and chassis power unit of a modular motor home, the department shall title the modular motor home according to the make of the refurbished coach. The manufacturer's cab and chassis vehicle identification number determines the model year. The department shall conduct a level one inspection of the vehicle and shall brand the title refurbished.

2. If a modular motor home is separated by removal of the coach or body component from the cab and chassis power unit and a cargo box, container or structure, if any, other than a motor home coach, is fitted to the cab and chassis unit, it ceases to be a modular motor home. The department shall conduct a level one inspection and shall title the vehicle according to the body style determined by the inspection. The department shall use the make and model year of the cab and chassis for titling purposes and shall brand the title refurbished.

B. If a vehicle covered by this section is offered for sale, a person who sells the vehicle shall keep full and complete disclosure statements and present those statements to any person or entity that requests them at the time of a sale or purchase. For the purposes of this subsection, full and complete disclosure statements are documents that accurately reflect the history of the original manufacturer's cab and chassis, including vehicle identification numbers, dates of required inspections, odometer readings and other information prescribed by the director in rules.

C. For the purposes of this section, "modular motor home" means:

1. A type of motor home that is primarily designed as temporary living quarters, that satisfies the requirements prescribed in section 28-4301, paragraph 21 20, subdivision (b) and that is intended from inception through final assembly to consist of an incomplete cab and chassis power unit component and a coach or body component that are designed and engineered to be joined or separated without sheet metal modifications to the cab and chassis power unit component.

2. A vehicle that if joined to form a single unit consists of both:

(a) A cab and chassis power unit component that is purchased or acquired new from an original manufacturer.

(b) A coach or body component that is either purchased or acquired new from an original manufacturer or that is refurbished.

Sec. 2. Section 28-4301, Arizona Revised Statutes, is amended to read:

28-4301. Definitions

In this chapter, unless the context otherwise requires:

1. "Area of responsibility" means the area surrounding an individual dealer that the factory designates as that dealer's individual primary

1 geographic territory for the purpose of marketing, promoting, selling and
2 leasing new motor vehicles. In the absence of the factory designated area,
3 the area of responsibility is that geographical area surrounding a dealer
4 that lies closer to that dealer than to other dealers of the same
5 line-make.

6 2. "Automotive recycler" means a person who is engaged in the business
7 of buying or acquiring a motor vehicle solely for the purpose of dismantling,
8 selling or otherwise disposing of the parts or accessories and who dismantles
9 six or more vehicles in a calendar year.

10 3. "Branch license" means a license that is issued by the director to
11 a licensed motor vehicle dealer and that permits the licensee to sell motor
12 vehicles from an established place of business within the same county but
13 other than the original or principal place of business for which the license
14 was issued.

15 4. "Broker" means a person who for any fee, commission or other
16 valuable consideration offers to provide, provides or represents that the
17 person will provide a service of arranging or assisting in effecting the
18 purchase of a motor vehicle and who is not:

19 (a) A new motor vehicle dealer or an employee or agent of a new motor
20 vehicle dealer.

21 (b) A used motor vehicle dealer or an employee or agent of a used
22 motor vehicle dealer.

23 (c) A manufacturer or employee or agent of a manufacturer.

24 (d) An auctioneer or engaged in the auto auction business.

25 (e) A wholesale motor vehicle dealer.

26 5. "Community" means the relevant market area. For the purposes of
27 this paragraph, "relevant market area" means the incorporated city or town
28 in which the franchise is located.

29 6. "Distributor" means a person who either:

30 (a) Sells or distributes new motor vehicles to new motor vehicle
31 dealers in this state.

32 (b) Maintains distributor representatives in this state.

33 7. "Distributor branch" means a branch office maintained or availed
34 of by a distributor for either:

35 (a) The sale of new motor vehicles to new motor vehicle dealers in
36 this state.

37 (b) Directing or supervising its representatives in this state.

38 8. "Established place of business":

39 (a) Means a permanent enclosed building or structure that is owned
40 either in fee or leased with sufficient space to display two or more motor
41 vehicles of a kind and type that the dealer is licensed to sell and that is
42 devoted principally to the use of a motor vehicle dealer in the conduct of
43 the business of the dealer.

44 (b) In the case of a used motor vehicle dealer, trailer dealer or
45 semitrailer dealer:

1 (i) Need not be a permanent building or structure or part of a
2 permanent building or structure.

3 (ii) May be a vacant lot or part of a vacant lot.

4 (iii) Does not mean or include a residence, tent, temporary stand or
5 temporary quarters or permanent quarters occupied pursuant to a temporary
6 arrangement.

7 (c) In the case of an automotive recycler, means a permanent site or
8 location at which the business of an automotive recycler is or will be
9 conducted.

10 9. "Exhibitor" means a manufacturer of new motor homes that exhibits
11 new motor homes at a special event.

12 10. "Factory branch" means a branch office maintained or availed of by
13 a manufacturer for either:

14 (a) The sale of new motor vehicles to distributors or the sale of new
15 motor vehicles to new motor vehicle dealers in this state.

16 (b) Directing or supervising its representatives in this state.

17 11. "Financial institution" means a bank, trust company, savings and
18 loan association, credit union, consumer lender, international banking
19 facility or holding company that is licensed, regulated or insured by the
20 state banking department, the federal deposit insurance corporation, the
21 office of thrift supervision, the comptroller of the currency, the national
22 credit union share insurance fund or the national credit union
23 administration.

24 12. "Franchise" means a contract between two or more persons if all of
25 the following conditions are included:

26 (a) A commercial relationship of definite duration or continuing
27 indefinite duration is involved.

28 (b) The franchisee is granted the right to offer, sell and service in
29 this state new motor vehicles manufactured or distributed by the franchisor.

30 (c) The franchisee, as a separate business, constitutes a component
31 of the franchisor's distribution system.

32 (d) The operation of the franchisee's business is substantially
33 associated with the franchisor's trademark, service mark, trade name,
34 advertising or other commercial symbol designating the franchisor.

35 (e) The operation of the franchisee's business is substantially
36 reliant on the franchisor for the continued supply of new motor vehicles,
37 parts and accessories.

38 13. "Franchisee" means a person who both:

39 (a) Receives new motor vehicles from the franchisor under a franchise.

40 (b) Offers and sells to and services new motor vehicles for the
41 general public.

42 14. "Franchisor" means a person who both:

43 (a) Manufactures or distributes new motor vehicles.

44 (b) May enter into a franchise.

1 15. "Importer" means a person who transports or arranges for the
2 transportation of a foreign manufactured new motor vehicle into the United
3 States for sale in this state.

4 16. "Lead" means any retail consumer who satisfies all of the
5 following:

6 (a) Responds to a factory-directed program that obtains consumer
7 contact information and that provides such information to one or more
8 dealers.

9 (b) Expresses an interest to the factory in purchasing, leasing or
10 acquiring any vehicle or product, service or financing available from the
11 dealers of that factory.

12 (c) Does not qualify for any reasonable factory sponsored employee,
13 retiree or vendor new vehicle purchase program or any other reasonable
14 similar factory new vehicle purchase program.

15 17. "Line-make" means those motor vehicles that are offered for sale,
16 lease or distribution under a common name, trademark, service mark or brand
17 name of the manufacturer of those same motor vehicles.

18 18. "Major component part" includes a motor vehicle or vehicle part
19 that the manufacturer has assigned any factory, motor, serial or other
20 identification number or mark.

21 19. "Manufacturer" means any person who either:

22 (a) Manufactures or assembles new motor vehicles.

23 (b) Manufactures or installs on previously assembled truck chassis
24 special bodies or equipment that when installed forms an integral part of the
25 new motor vehicle and that constitutes a major manufacturing alteration,
26 excluding the installation of a camper on a pickup truck.

27 ~~20. "Mobile medical clinic" means a motor vehicle retrofitted for~~
28 ~~exclusive use as a medical office or clinic for medical services regulated~~
29 ~~under title 32.~~

30 21. 20. "Motor home" means a motor vehicle that is primarily designed
31 as temporary living quarters and that:

32 (a) Is built onto as an integral part of, or is permanently attached
33 to, a motor vehicle chassis.

34 (b) Contains at least four of the following independent life support
35 systems if each is permanently installed and designed to be removed only for
36 purposes of repair or replacement:

37 (i) A cooking facility with an on board fuel source.

38 (ii) A gas or electric refrigerator.

39 (iii) A toilet with exterior evacuation.

40 (iv) A heating or air conditioning system with an on board power or
41 fuel source separate from the vehicle engine.

42 (v) A potable water supply system that includes at least a sink, a
43 faucet and a water tank with an exterior service supply connection.

44 (vi) A 110-125 volt electric power supply.

1 ~~22.~~ 21. "Motor vehicle" means an automobile, motor bus, motorcycle,
2 truck or truck tractor or any other self-propelled vehicle, trailer or
3 semitrailer.

4 ~~23.~~ 22. "Motor vehicle dealer" means a new motor vehicle dealer, a
5 used motor vehicle dealer, a broker or a wholesale motor vehicle auction
6 dealer, excluding a person who comes into possession of a motor vehicle as
7 an incident to the person's regular business and who sells or exchanges the
8 motor vehicle.

9 ~~24.~~ 23. "New house trailer dealer" means a person who buys, sells,
10 exchanges or offers or attempts to negotiate a sale or exchange of an
11 interest in, or who is engaged in the business of selling, new house trailers
12 or used house trailers taken in trade on new house trailers. For the
13 purposes of this paragraph, "house trailer" means a vehicle, other than a
14 motor vehicle, that is built on a chassis designed for being drawn on the
15 highways by a motor vehicle and that is designed for human habitation.

16 ~~25.~~ 24. "New motor vehicle" means a motor vehicle, other than a used
17 motor vehicle, that is held either for:

18 (a) Sale by the franchisee who first acquired the vehicle from the
19 manufacturer or distributor of the vehicle.

20 (b) Sale by another franchisee of the same line-make.

21 ~~26.~~ 25. "New motor vehicle dealer" means a person who buys, sells,
22 exchanges or offers or attempts to negotiate a sale or exchange of an
23 interest in, or who is engaged in the business of selling, new motor vehicles
24 or used motor vehicles taken in trade on new motor vehicles or used vehicles
25 purchased for resale.

26 ~~27.~~ 26. "Off-premises display and sales" means a promotion or sale of
27 motor vehicles for a period of time as specified by the director that both:

28 (a) Is sponsored by a licensed motor vehicle dealer, the licensed
29 motor vehicle dealer's agents or the manufacturer.

30 (b) Takes place at a location within the same county but not at the
31 licensee's established place of business.

32 ~~28.~~ 27. "Off-premises exhibition" means the exhibition of a motor
33 vehicle for a period of time as specified by the director at a location
34 within the same county but not at the established place of business of a
35 licensed motor vehicle dealer and at which a solicitation or sale does not
36 occur.

37 ~~29.~~ 28. "Provisional automotive recycler's license" means a license
38 that both:

39 (a) Is issued by the department only in conjunction with an
40 application for an automotive recycler's license.

41 (b) Permits the applicant or applicants to conduct the business of an
42 automotive recycler regulated by this chapter pending completion of the
43 criminal records check pursuant to section 28-4361.

44 ~~30.~~ 29. "Provisional dealer's license" means a license that both:

1 (a) Is issued by the department only in conjunction with an
2 application for a dealer's license.

3 (b) Permits the applicant or applicants to conduct the business of a
4 motor vehicle dealer regulated by this chapter pending completion of the
5 criminal records check pursuant to section 28-4361.

6 ~~31.~~ 30. "Retail consumer" means any person purchasing, leasing or
7 acquiring or possibly purchasing, leasing or acquiring a vehicle or product,
8 service or financing not for resale.

9 ~~32.~~ 31. "Service" means any service that is sold, leased or provided
10 to retail consumers and that directly relates to the ownership or leasing of
11 a new or used motor vehicle, including extended service contracts or motor
12 vehicle warranty and nonwarranty repairs or maintenance, including both parts
13 and labor.

14 ~~33.~~ 32. "Special event" means an exhibition of new motor homes by a
15 motor vehicle dealer licensed to sell new motor homes or an exhibitor for a
16 period of time specified by the director at a location in this state other
17 than the licensee's or exhibitor's established place of business.

18 ~~34.~~ 33. "Used motor vehicle" means a motor vehicle that has been sold,
19 bargained, exchanged or given away or the title to the motor vehicle has been
20 transferred from the person who first acquired the vehicle from the
21 manufacturer, or importer, dealer or agent of the manufacturer or importer,
22 and that has been placed in bona fide consumer use. For the purposes of this
23 paragraph, "bona fide consumer use" means actual operation by an owner who
24 acquired a new motor vehicle both:

25 (a) For use in the owner's business or for pleasure or otherwise.

26 (b) For which a certificate of title has been issued or that has been
27 registered as provided by law.

28 ~~35.~~ 34. "Used motor vehicle dealer" means a person, other than a new
29 motor vehicle dealer, who buys, sells, exchanges or offers or attempts to
30 negotiate a sale or exchange of an interest in, or who is engaged in the
31 business of selling, four or more used motor vehicles in a continuous twelve
32 month period. Used motor vehicle dealer does not include a person who buys,
33 sells, exchanges or offers or attempts to negotiate a sale of or exchange an
34 interest in a classic car as defined in section 28-2483 or a historic vehicle
35 as defined in section 28-2484.

36 ~~36.~~ 35. "Wholesale motor vehicle auction dealer" means a person who
37 both:

38 (a) Is in the business of providing auction services solely in
39 wholesale transactions to motor vehicle dealers licensed by this state or any
40 other jurisdiction.

41 (b) Does not buy, sell or own the motor vehicles the auction dealer
42 auctions in the ordinary course of business.

43 ~~37.~~ 36. "Wholesale motor vehicle dealer" means a person who sells used
44 motor vehicles only to licensed motor vehicle dealers.

1 38. ~~"Zone" means the geographic marketing area or district designated~~
2 ~~by the franchisor and serviced by the franchisor's factory or distributor~~
3 ~~branch.~~

4 Sec. 3. Section 28-4335, Arizona Revised Statutes, is amended to read:

5 28-4335. Wholesale motor vehicle dealer or broker

6 A. A wholesale motor vehicle dealer, OR a broker or a person engaged
7 ~~in the business of selling mobile medical clinics:~~

8 1. Is required to be licensed pursuant to this chapter.

9 2. Is not required to operate from an established place of business.

10 3. Shall maintain a place of business in which records of the business
11 are kept.

12 B. If the licensee is a broker, the principal place of business shall
13 not be a location that is zoned for residential use.

14 Sec. 4. Section 28-4403, Arizona Revised Statutes, is amended to read:

15 28-4403. Record requirements; motor vehicle information;
16 inspection; liability

17 A. A licensee shall keep and maintain at the licensee's established
18 place of business, or place of business if the licensee is a ~~motor vehicle~~
19 ~~dealer in mobile medical clinics~~, a broker or a wholesale motor vehicle
20 dealer, a permanent record in the form prescribed by the director containing:

21 1. A particular description of each motor vehicle of a type subject
22 to registration under the laws of this state that is bought, sold, brokered
23 or exchanged by the licensee or received or accepted by the licensee for
24 sale, brokering or exchange.

25 2. A particular description of each used motor vehicle body or chassis
26 that is sold or otherwise disposed of.

27 3. A particular description of each motor vehicle that is bought or
28 otherwise acquired and wrecked by the licensee.

29 4. The name and address of the person from whom a motor vehicle, motor
30 vehicle body or motor vehicle chassis was purchased or otherwise acquired and
31 the date it was purchased or acquired.

32 5. The name and address of the person to whom the motor vehicle, motor
33 vehicle body or motor vehicle chassis was sold or otherwise disposed of, the
34 date it was sold or disposed of and a sufficient description of the vehicle,
35 body or chassis by name or identifying number or otherwise to identify it.

36 B. A licensed automotive recycler that has a vehicle in the automotive
37 recycler's inventory shall:

38 1. At the same time have possession of a duly and regularly assigned
39 salvage certificate of title, nonrepairable vehicle certificate of title or
40 dismantle certificate of title to the vehicle.

41 2. Not offer for sale or sell a vehicle unless a salvage certificate
42 of title, nonrepairable vehicle certificate of title or dismantle certificate
43 of title to the vehicle has been obtained.

1 C. Each motor vehicle dealer shall give the customer a written
2 contract and shall maintain a copy of the contract for three years at the
3 dealer's established place of business.

4 D. Each record required by this section and all inventories relating
5 to the records of a licensee shall be available at all times for physical
6 inspection by agents of the department or members of the highway patrol
7 division. The agents or members may enter on premises where the records or
8 inventories are located during normal business hours for purposes of the
9 inspection. The licensee or any designated employee or agent may accompany
10 any person making the inspection while the person is on the licensee's
11 premises.

12 E. The licensee is only liable to a person making an inspection under
13 this section for an injury arising out of the condition of the premises that
14 occurs while the person is on the licensee's premises if the licensee
15 knowingly allows the person to encounter a hidden peril or wantonly or
16 wilfully causes the person harm.

17 Sec. 5. Section 28-4408, Arizona Revised Statutes, is amended to read:

18 28-4408. Change in place of business

19 Before a licensee moves from one established place of business to
20 another, or from one place of business to another if the licensee is a motor
21 vehicle dealer in mobile medical clinics, a broker or a wholesale motor
22 vehicle dealer, the licensee shall apply to and obtain consent to the removal
23 from the director.

24 Sec. 6. Section 28-4498, Arizona Revised Statutes, is amended to read:

25 28-4498. Licensed dealer and automotive recycler; cease and
26 desist order; request for hearing

27 A. If the director has reasonable cause to believe from an
28 investigation made by the director that a licensed motor vehicle dealer or
29 automotive recycler has violated or is violating a law of this state or rule
30 adopted by the department, the director may immediately issue and serve on
31 the licensee by personal delivery or certified FIRST CLASS mail at the
32 business address of record a cease and desist order requiring the licensee
33 to immediately cease and desist from further engaging in the business or the
34 prohibited activity, or both, on the receipt of the notice. A licensee who
35 receives a cease and desist order may submit a written request for a hearing
36 to the director. The licensee shall submit the request for a hearing within
37 thirty days after the licensee receives the cease and desist order. On
38 failure of a licensee to comply with the order or after a requested hearing,
39 the director may suspend or cancel the licensee's license or permit pursuant
40 to section 28-4493 and section 28-4494 or 28-4495 or may take action pursuant
41 to section 28-4496.

42 B. The director of the department of transportation shall provide a
43 copy of the cease and desist order to the director of the department of
44 revenue.

1 Sec. 7. Section 28-4499, Arizona Revised Statutes, is amended to read:
2 28-4499. Unlicensed dealer and automotive recycler; cease and
3 desist order; request for hearing

4 A. If the director has reasonable cause to believe from information
5 furnished to the director or from an investigation made by the director that
6 a person is engaged in a business regulated by this chapter without being
7 licensed as required by law, the director shall immediately issue and serve
8 on the person by personal delivery or certified FIRST CLASS mail at the
9 person's last known address a cease and desist order requiring the person to
10 immediately cease and desist from further engaging in the business. A person
11 who receives a cease and desist order may submit a written request for a
12 hearing to the director. The person shall submit the request for a hearing
13 within thirty days after the person receives the cease and desist order.

14 B. The director of the department of transportation shall provide a
15 copy of the cease and desist order to the director of the department of
16 revenue.

17 Sec. 8. Section 28-5109, Arizona Revised Statutes, is amended to read:
18 28-5109. Cease and desist order

19 A. If the director has reasonable cause to believe that a person who
20 is authorized as a third party pursuant to this article or who holds a
21 certificate granted pursuant to this article is violating any provision of
22 this title, the director shall immediately issue and serve on the person, by
23 personal delivery or certified FIRST CLASS mail at the person's last known
24 address, a cease and desist order.

25 B. On receipt of the cease and desist order, the person shall
26 immediately cease and desist, or cease and desist as provided in the contract
27 between the department and the authorized third party, from further engaging
28 in any activity that is authorized pursuant to this article and that is
29 specified in the cease and desist order.

30 C. On failure of the person to comply with the cease and desist order,
31 the director may conduct a hearing pursuant to this article.

32 Sec. 9. Title 32, chapter 23, article 3, Arizona Revised Statutes, is
33 amended by adding section 32-2394, to read:

34 32-2394. Cease and desist orders

35 A. IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A PROFESSIONAL
36 DRIVER TRAINING SCHOOL LICENSED PURSUANT TO ARTICLE 2 OF THIS CHAPTER HAS
37 VIOLATED OR IS VIOLATING A LAW OF THIS STATE OR RULE ADOPTED BY THE DIRECTOR,
38 THE DIRECTOR MAY IMMEDIATELY ISSUE AND SERVE ON THE LICENSEE, BY PERSONAL
39 DELIVERY OR FIRST CLASS MAIL AT THE BUSINESS ADDRESS OF RECORD, A CEASE AND
40 DESIST ORDER REQUIRING THE LICENSEE TO IMMEDIATELY CEASE AND DESIST FROM
41 FURTHER ENGAGING IN THE BUSINESS OR THE PROHIBITED ACTIVITY, OR BOTH.

1 B. A LICENSEE WHO RECEIVES A CEASE AND DESIST ORDER MAY SUBMIT A
2 WRITTEN REQUEST FOR A HEARING TO THE DIRECTOR. THE LICENSEE SHALL SUBMIT THE
3 REQUEST FOR A HEARING WITHIN THIRTY DAYS AFTER THE LICENSEE RECEIVES THE
4 CEASE AND DESIST ORDER. ON FAILURE OF A LICENSEE TO COMPLY WITH THE ORDER
5 OR AFTER A REQUESTED HEARING, THE DIRECTOR MAY SUSPEND OR CANCEL THE
6 LICENSEE'S LICENSE PURSUANT TO SECTION 32-2391.

APPROVED BY THE GOVERNOR MAY 12, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 13, 2003.

Passed the House March 4, 2003,

Passed the Senate May 5, 2003

by the following vote: 60 Ayes,

by the following vote: 25 Ayes,

0 Nays, 0 Not Voting

3 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Ken Bennett
President of the Senate

Norman L. Fyone
Chief Clerk of the House

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2003

at 12:06 o'clock P M.

Sandra Ramirez
Secretary to the Governor

Approved this 12 day of

May, 2003,

at 9⁰⁰ o'clock 11 M.

Jon R. Riffe
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13 day of May, 2003,

at 4:03 o'clock P M.

Janice L. Brewer
Secretary of State